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States and Lawyers' Fees: Transparency Needed

As attorneys general become more engaged in consumer-protection issues, more outside attorneys will be hired on a to pursue litigation on behalf of the state.

By BILL MCCOLLUM

As the National Association of Attorneys General holds its annual spring meeting in Washington, D.C., this week, I am reminded of the dramatic transformation in the role of our state attorneys general over the past few years. Since the 2007 financial crisis, state attorneys general have stepped up consumer-protection enforcement and are well on their way to displacing federal authorities as the nation's chief consumer-protection watchdogs.

As the former attorney general of Florida, I understand both the power and potential pitfalls of the job. This increased role and the increased visibility that comes with it mean that attorneys general must (and should) work that much harder to maintain public confidence in the integrity of their office.

State attorneys general once held relatively low-profile roles in state government, serving as legal advisers for governors, state agencies and local government bodies. Over the years most became active in civil litigation for state agencies, criminal prosecutions, Medicaid-fraud investigations, and to enforce state consumer-protection and antitrust laws.

More recently, federal laws have empowered state attorneys general to enforce key federal consumer- protection laws in addition to their own. Most notably, the Dodd-Frank Wall Street Reform and Consumer Protection Act, which became law last July, effectively deputized state attorneys general to bring consumer-protection enforcement actions and lawsuits against financial-services firms.

As state attorneys general become more engaged in major consumer-protection issues, more outside attorneys will be hired on a contingency fee basis to pursue litigation on behalf of the state. As payment, these attorneys receive a percentage of whatever awards or settlements the state may recover on behalf of the taxpayer.

In the past, some private law firms received excessively high fees in state cases. To avoid this outcome and prevent public perception of impropriety, state attorneys general would do well to support enactment of legislation in their states similar to Florida's Transparency in Private Attorney Contracting (TIPAC) law, which I worked to enact while attorney general.

Under TIPAC, Florida's attorney general, when deciding to engage outside counsel on a contingency fee basis, must make a written finding that the office does not have the resources to

handle the matter in-house, and then must seek competitive bids from outside firms wishing to do the work. Detailed time records must be kept by firms awarded such contracts. Contingency fees are subject to tiered limits and an aggregate cap of \$50 million, exclusive of reasonable costs and expenses. All contingency-fee contracts must be posted on the website of the attorney general in a timely manner, and all fee payments must be posted within five days and remain posted for the duration of the contract.

Anytime an office hires private counsel on behalf of the state, attorneys general owe it to the taxpayers to be transparent and accountable in how and why they do so. They should be able to articulate and demonstrate the value that outside counsel is providing to our states and to the taxpayers.

Making sure that these outside counsel relationships receive the full sunlight of public scrutiny should be on the top of the agenda for every supporter of good government. Already 11 states—Arizona, Georgia, Iowa, Indiana, Missouri, Montana, Mississippi, Nebraska, New Mexico, Oklahoma and South Carolina—have TIPAC or related bills introduced in their legislatures this year, and I urge other states to follow their lead.

As attorneys general continue to play an increasing role in protecting the public interest, they must maintain the public's confidence. Just as attorneys general have worked together to reshape their roles and step up consumer-protection actions, they should work together to ensure that the highest standards of transparency and accountability are practiced by all.

Mr. McCollum is the former attorney general of Florida and a former Republican congressman (1981-2001) from Orlando.

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